



Global Bank of Commerce Limited of Antigua and Barbuda v Spire Bank Limited (Civil Case E916 of 2023) [2025] KEHC 17859 (KLR) (Civ) (28 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17859 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE E916 OF 2023
FG MUGAMBI, J
NOVEMBER 28, 2025**

BETWEEN

**GLOBAL BANK OF COMMERCE LIMITED OF ANTIGUA AND
BARBUDA PLAINTIFF**

AND

SPIRE BANK LIMITED DEFENDANT

JUDGMENT

Background and Introduction

1. The plaintiff, a company incorporated and licensed as an international financial institution in Antigua and Barbuda under the International Business Corporations Act, 1982, entered into an agreement with the defendant, a Kenyan registered financial institution regulated by the Central Bank of Kenya. The agreement was for the opening and maintenance of correspondent banking accounts.
2. Pursuant to this agreement, on 2nd January 2018, the plaintiff opened two accounts with the defendant: a Euro account (No. XXXXXXXXX1203) and a United States Dollar account (No. XXXXXXXXX1202). In February 2018, the plaintiff deposited €633,176.88 and \$1,945,484.38 into the respective accounts. Thereafter, the plaintiff issued multiple instructions to the defendant to transfer or otherwise apply the funds in accordance with standard correspondent banking practices. The plaintiff contends that the defendant did not act on these instructions, citing a court order of 19th April 2018 issued at the request of the Banking Fraud Investigation Unit.
3. The plaintiff further contends that throughout the period of the freeze, the defendant repeatedly assured it that the funds were safe and intact, and that the only impediment to their release was the subsisting court order. The plaintiff, therefore expected that the funds would be available upon the lifting of the order. On 9th December 2020, the court vacated the freezing order. Despite this, the



defendant continued to withhold the funds which to the plaintiff demonstrated a lack of good faith in its obligations under the correspondent banking relationship.

4. The plaintiff confirms that following the vacation of the freezing order on 9th December 2020, its Advocates promptly served the defendant with the court order and demanded the release of the full sums held in the two correspondent accounts. The defendant acknowledged receipt of the order but failed to act within the stipulated time, citing an unfounded excuse that the demand was made on a Wednesday close to the weekend. Subsequently, the defendant demanded several documents from the plaintiff.
5. On 4th January 2021, the plaintiff's Advocates submitted all documentation. On 6th January 2021, the defendant remitted €633,176.88 (equivalent to \$773,805.54), but failed to release the remaining \$1,945,484.38. Subsequently, officials from the defendant's shareholder, Mwalimu National Sacco, admitted that the bank did not have the funds at hand and requested a 30-day reprieve to make part payment; an arrangement that was never honored forcing the plaintiff to initiate contempt of court proceedings and serve a statutory demand under the *Insolvency Act*.
6. The plaintiff contends that even the negotiated arrangement in which the defendant proposed to pay the outstanding amount in four monthly installments was not complied with. The payments were delayed and inconsistent, and required follow-ups and reminders from the plaintiff's advocates. The defendant disputed payment of the interest charged and the costs incurred in the course of recovering the monies. In the end, the plaintiff states that the defendant owes them an outstanding amount of USD 203,912.28 being the total amount due plus interest.
7. The defendant filed a statement of defence dated 16th December 2021. They deny being in breach of any contractual obligations and argue that all monies due have been paid to the plaintiff. The defendant further argues that the plaintiff accepted its counter-proposal for payment on instalments on a without-prejudice basis, without the disputed charges and interest that is now claimed.
8. During the hearing, each of the parties called 1 witness; PW1 was Dr. Wallace Williams and DW1 was Mr. Brian Maingi Kilonzo. Their testimonies align with the summary of the case as I have provided and therefore I will not regurgitate the same save to refer to the testimonies in my analysis.

Analysis and Determination

9. From the pleadings and parties' rival submissions, the issues that fall for determination can be summarized as follows:
 - i. Whether the defendant breached its contractual obligations;
 - ii. Whether the plaintiff is entitled to the interest claimed; and
 - iii. Whether the plaintiff is entitled to general and special damages for such breach.

Whether the defendant breached its contractual obligations:

10. It is not in dispute that a contractual relationship existed between the parties evidenced by the agreement of 2nd January 2018. Under Clause 1(iii) of this agreement, the defendant, acting as the correspondent bank, undertook to receive and credit funds into the plaintiff's account, execute the plaintiff's instructions regarding the transfer of funds from the account and provide settlement and cash services as required to facilitate payments and transfers on behalf of the plaintiff and its clients.



11. This arrangement, while institutional in nature, mirrors the conventional bank-customer relationship in terms of the obligations it imposes. Accordingly, it is appropriate to consider the legal principles governing the duty of care owed by a bank to its customer.
12. In *Eunice Wairimu Muturi & Another V James Maina Thuku & Another*, [2018] eKLR the Court affirmed that:

“The general principles of law are that, the relationship between the Bank and its customer is contractual. The main basis of this relationship is one of debtor and creditor. As held in the case of; *Foley v Hill* [1848], where the customer’s account is in credit, then the bank is in effect the customer’s debtor, that is to say that the bank owes the money to the customer. Where it is in debit, then the customer is the banker’s debtor. In this contractual relationship, the bank owes the customer several duties which includes but not limited to: a duty to comply with the customer’s mandate...It is important to realize that this duty not only refers to the original mandate completed when the customer opened the account but also various other documents which are interpreted as mandates, including standing orders, direct debits and cheques. Therefore, the Bank owes its customer an obligation to obey the customer’s instructions based on the mandate given.”
13. In *Encyclopedia of Banking Law C.21 Selangor United Rubber Estate Ltd V Cradock* (No. 3), [1968] 2 ALL ER 1073, the court, in confirming this duty, affirmed that:

“A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regard to operations with its contracts with its customers. The duty to exercise reasonable care and skill extends over the whole range of banking business within the contract with the customer. Thus, the duty applies to interpreting, ascertaining and acting in accordance with the instructions of the customer.”
14. This principle has been reaffirmed by the Court of Appeal in *Fidelity Commercial Bank Limited V Italian Market Kenya Limited*, [2017] KECA 370 (KLR)) where the Court underscored the bank’s obligation to act diligently and in accordance with its customer’s instructions. Similarly, in *Habihalim Company Limited V Barclays Bank of Kenya Ltd*, (2019) eKLR, *Sergon J* held:

“Among the obligations that fall within the purview of a bank in the course of a contractual relationship with its customer is the obligation to obey and follow through with the instructions of its customer particularly where the customer’s account is in credit.”
15. In the present case, it is uncontested that the plaintiff’s accounts were in credit at all material times. The plaintiff alleges that the defendant failed to act on its instructions even prior to the issuance of the freezing order. However, having reviewed the record, I find that no such instructions were issued before the court order dated 19th April 2018, which, under Clause 4, directed the preservation of the plaintiff’s funds pending the conclusion of investigations.
16. PW1 conceded that the defendant was legally obligated to comply with court orders. It was further acknowledged that the freezing orders originated from the Banking Fraud Investigation Unit. Consequently, at that juncture, the defendant cannot be faulted for failing to act on the plaintiff’s



instructions, as it was bound by a lawful directive. Clause 7(iv) of the agreement between the parties clearly shields the defendant from liability during the subsistence of freezing orders. It provides:

“The correspondent shall not be held liable for the losses occasioned or suffered by the respondent if the money held on the account is under attachment and or account frozen pursuant to court orders....”

17. The plaintiff also contends that the defendant failed to make reasonable efforts to follow up on the status of the investigations. However, the evidence suggests otherwise. A letter dated 28th September 2020 from the defendant to the plaintiff’s advocates indicates that the bank had been in regular communication with both the Banking Fraud Investigation Unit and the Central Bank of Kenya. The investigative authorities consistently advised that the matter was still under investigation and that the bank would be informed upon its conclusion. The defendant rightly noted that it had no control over the pace of the investigations and was, therefore, constrained in its actions. The letter stated as follows:

“We have on a regular basis followed up and made enquiries on the matter with both the Banking Fraud Investigation Unit and the Central Bank of Kenya and at all times the said investigative authorities have advised that the matter is still under investigations and once concluded they would advise the bank accordingly. As such, we note that the bank’s hands are tied in the matter as the bank does not control the pace at which the aforesaid authorities carry out their investigations.”

18. Given this context, the defendant’s refusal to meet with the plaintiff’s advocates, as communicated in its letter dated 23rd November 2020, was reasonable. The bank indicated its willingness to engage once the investigations had concluded. There is no evidence to suggest that the defendant withheld any material information from the plaintiff during the freeze period.

19. The turning point in this matter came on 9th December 2020, when the court orders lifting the freeze were served on the defendant. The plaintiff, through its advocates, issued payment instructions on 10th December 2020. Despite the clear provisions of the agreement, the defendant did not remit all the funds until 11th November 2021, nearly eleven months after the payment instructions were issued. The defendant sought to justify this delay by citing logistical challenges, lack of proper documentation, and cash flow constraints. These explanations, however, are unconvincing and fail to absolve it of liability.

20. Firstly, while the defendant claimed that it required proper documentation to process the payment instructions, it did not communicate this requirement promptly upon receipt of the instructions on 10th December 2020. This point alone undermines the credibility of this justification and suggests a lack of diligence and transparency on the part of the defendant.

21. Secondly, and more critically, the documentation and procedural hurdles imposed on the plaintiff were inconsistent with the terms of the agreement. Clause 3(iv) of the agreement clearly outlined the timelines and conditions under which payment instructions would be executed; either on the same business day if received before 1700hrs, or on the next business day if received thereafter. There is no provision requiring additional documentation beyond what was already provided, nor any clause that permitted the defendant to delay execution based on internal logistical or financial constraints.

22. The failure of the defendant to act on the plaintiff’s instructions within the agreed timelines constitutes a breach of the defendant’s contractual obligations. The delay, coupled with the shifting and unsupported reasons given, points to bad faith and a failure to uphold the duty of care owed to the plaintiff under the banking relationship. The eventual payment of the funds, nearly a year after



they became due, does not absolve the defendant of liability. Rather, it confirms the breach and the resultant prejudice suffered by the plaintiff.

Whether the plaintiff is entitled to the interest claimed:

23. The central question here is whether the plaintiff is entitled to claim interest on the delayed remittance of funds held in its accounts by the defendant. As I have already stated, the record reveals that there was a prolonged and unjustified delay by the defendant in the payment of substantial sums owed to the plaintiff, despite clear instructions and agreed timelines.
24. In addition to the logistical issues and the requirements imposed by the defendant, which I have addressed already, DW1 acknowledged in his testimony that the defendant had cash flow issues and could not pay all the funds at once. Conversely, PW1 confirmed that while the principal sum had eventually been refunded in full, the plaintiff's claim was specifically for interest accrued from the date the funds were initially deposited until the date of final payment.
25. Had the defendant complied with the plaintiff's instructions and released the funds promptly, specifically within the two-day window following the lifting of the freezing orders, this claim for interest would likely not have arisen. The freezing order was lifted on 9th December 2020, and instructions for the release of funds were issued on 10th December 2020. Despite DW1's admission that the funds were available even prior to the freezing order, the final payment was not made until 11th November 2021. This resulted in a delay of approximately eleven months, during which the plaintiff was deprived of access to its own funds.
26. In *Equity Bank of Kenya & Another V Robert Chesang*, [2016] eKLR, the Court emphasized the fiduciary and contractual obligations of banks to manage customer accounts with diligence. The Court stated as follows:

“The bank is also under a contractual duty to diligently handle accounts of a customer, to ensure that funds deposited on account are available when required by the customer. Any deviation from that understanding without justifiable reasons which should be communicated to the customer well in advance or immediately, the bank is in breach of a contract with the customer and is liable in damages.”
27. It is standard practice in the banking industry to compensate for the time value of money. In this case, the defendant's actions, whether by negligence or willful delay, resulted in the plaintiff losing the opportunity to utilize its funds for income-generating activities. The plaintiff has reasonably claimed interest at a rate of 3% per annum, which reflects the profit it would have earned had the funds been available during the period of delay. It is inconceivable that the defendant, having utilized the funds held in the plaintiff's account, would now seek to deny the plaintiff the benefit of interest that would have accrued had the funds been timely released. The principle of restitution and fairness demands that the plaintiff be compensated for the loss of use of its money.
28. There is no evidence before the Court as alluded to by the defendant, to suggest that the plaintiff waived its right to claim interest, notwithstanding its acceptance of payment in instalments. On the contrary, the plaintiff's conduct and correspondence indicate a consistent expectation that the delayed payments would attract interest. From the record it is clear that the plaintiff either treated the delay as a de facto loan, on which interest was payable, or explicitly demanded interest alongside the principal. Furthermore, even the renegotiated instalment plan was not honored by the defendant, which caused further loss and prejudice to the plaintiff.



29. I therefore find justification in awarding interest on the principal sum at the rate of 3% for the period between 15th December 2020 until 11th November 2021. This is sufficient to compensate the plaintiffs for the loss of use of the funds for the period.

Whether the plaintiff is entitled to general and special damages for such breach:

30. It is a well-established principle in contract law that general damages are not ordinarily awardable for breach of contract. This doctrine stems from the nature of contractual obligations, which are defined by the specific terms agreed upon by the parties. When a breach occurs, the remedy is typically limited to special damages, those that can be quantified and proven to have directly resulted from the breach, or liquidated damages, if stipulated in the contract. This principle was firmly upheld by the Court of Appeal in *Provincial Insurance Company of East Africa Ltd V Mordekai Mwangi Nandwa*, [1995–1998] 2 EA 289.
31. In relation to special damages, the law is equally settled that they must not only be specifically pleaded but also strictly proved. The burden lies on the claimant to demonstrate, through credible and admissible evidence, that the alleged losses were actually incurred and are directly attributable to the breach. This evidentiary threshold was clearly articulated in *Great Lakes Transport Co (U) Ltd V Kenya Revenue Authority*, [2009] eKLR where the Court of Appeal held as follows:
- “... an invoice is not a receipt for goods supplied unless it is specifically endorsed to the effect that the goods for which invoice was prepared were paid for. In such a case the endorsement should be visible on the invoice and then the invoice plus the endorsement on it can be treated as receipt for payment. What we mean is that in case the goods for which an invoice is issued have been paid for, one would normally expect endorsement such as the word “PAID” on the invoice and that would turn the status of the invoice into a receipt.”
32. The court emphasized that mere production of an invoice is insufficient to prove payment. In the present matter, the plaintiff’s claim for consultancy fees amounting to USD 10,000 is unsupported by sufficient evidence. While a consultancy agreement was produced, PW1 candidly admitted that the only documentation available were invoices issued by the consultant. Crucially, there was no receipt or proof of payment tendered to substantiate that the invoiced amount was ever settled. In the absence of such proof, the claim for consultancy fees cannot succeed.
33. Similarly, the claim for legal fees and related costs is equally unsubstantiated. PW1 confirmed that the amount claimed had not yet been paid to their advocates, but was merely “billable.” A billable amount does not equate to an incurred expense unless and until it is paid. The same deficiency applies to the travel and accommodation expenses, which were neither supported by receipts nor any other credible documentation to prove that the costs were actually incurred.

Disposition and Final Orders

34. Accordingly, the plaintiff’s suit succeeds against the defendants in the following terms:
- i. A declaration is hereby issued that the defendant breached the contract espoused in the bank and customer relationship between them;
 - ii. A declaration is hereby issued that as a result of this breach, the defendant is liable to compensate the plaintiff for the breach;



- iii. Special damages are awarded to the plaintiff equivalent to 3% of the principal amount (calculated based on €633,176.88 and \$1,945,484.38) from 15th December 2020 until 11th November 2021;
- iv. This amount shall attract interest at court rates from the date of institution of this suit until payment in full;
- v. The plaintiffs shall have the costs of the suit
- vi. The claim for special damages under headings iii, iv and v are hereby declined for lack of sufficient evidence.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2025.

F. MUGAMBI

JUDGE

